

Wednesday, 19 March, 1947

- - -

INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST
Chambers of the Tribunal
War Ministry Building
Tokyo, Japan

PROCEEDING IN CHAMBERS

In the matter of issuance of summons for
all defense witnesses whether voluntarily appearing
or not.

Before:

HON. SIR WILLIAM WEBB,
President of the Tribunal and
Member from the Commonwealth of
Australia.

Reported by

Jack Greenberg
Chief Court Reporter
IMTFE

Appearances:

For the Defense Section:

MR. FRANKLIN E. N. WARREN, Counsel for
the Accused DOHIHARA, Kenji and
OKA, Takasumi;
MR. T. OKAMOTO, Counsel for the Accused
MINAMI, Jiro;
MR. ROGER F. COLE, Counsel for the Accused
MUTO, Akira; and
MR. GEORGE A. FURNESS, Counsel for the
Accused SHIGEMITSU, Mamoru;

For the Prosecution Section:

Mr. FRANK S. TAVENNER, Jr.
Mr. SOLIS HORWITZ
Mr. DAVID SUTTON
Mr. ARTHUR A. SANDUSKY

For the Secretariat:

Mr. C. A. MANTZ, Clerk of the Court; and
Mr. H. W. DELANEY, Deputy Clerk of the
Court.

The proceedings were begun at 1600.

- - -

THE PRESIDENT: You want to see me about the mechanical difficulties of the defense?

MR. WARREN: The number one question is this: Our witnesses have stated that they would come voluntarily, but we find that they take their own time about it. For instance, we had a witness who decided he wanted to go home, and he got up, and he walked out.

THE PRESIDENT: Have you brought any that haven't received a subpoena?

MR. WARREN: Yes. As a matter of fact, in order to stop as much mechanics as we could, what we want to do, your Honor, is to subpoena these witnesses. Now, those that live away from Tokyo -- of course, your Honor knows the travel conditions are exceedingly bad -- these people cannot get transportation; and, if they have a subpoena, why, of course, then they can get it without any difficulty and can come in, and then we have some sort of a hold on them. And we should like the privilege of subpoenaing all of our witnesses in the future because I think we will save a vast amount of time and be able to proceed in a much more orderly fashion. I think that would carry out through the balance of our case.

THE PRESIDENT: What would be the total number of witnesses who would be called here and who would not depose on affidavit?

MR. WARREN: In this case -- I mean, in our phase, we expect roughly thirty.

THE PRESIDENT: Who will not have an affidavit?

MR. WARREN: Who will not have an affidavit. You see, we haven't had the time to go out and get these affidavits. We have so much mechanical work right here that we are putting about as high as, sometimes, fourteen to sixteen hours a day now; and on Saturdays and Sundays the preparation of keeping these documents and trying to keep up with our mechanical difficulties -- it is very bad.

And some of these witnesses, if we get them here and find -- well, of course, we know what they testify to; but, if we can eliminate them, of course, we will. We don't want to put in any more cumulative evidence than is necessary, but we would like permission of the Tribunal to subpoena these people, so that proper action will be taken if they just decide to walk off or roam around the halls, or something of that kind.

THE PRESIDENT: And how many are there all

together, thirty? Will that be the lot?

MR. WARREN: That will be the lot so far as this particular division is concerned. I am not prepared to say what the other men will have. I cannot say that; I have no idea.

MR. YAMAOKA: You mean only for the Manchurian division.

MR. WARREN: Yes, the whole Manchurian phase. That will be the lot of them so far as the Manchurian phase is concerned.

THE PRESIDENT: How many will give evidence on affidavit?

MR. T. OKAMOTO: Practically all of them have made affidavits, but simply the mechanical difficulties downstairs; I mean the translation -- they are not yet processed. We have Japanese affidavits.

MR. WARREN: You see, one of our main difficulties --

THE PRESIDENT: Thirty men will be called on subpoena, we'll say. How many will say "I made this affidavit on a certain date"?

MR. WARREN: How many have we affidavits from, do you remember offhand?

MR. T. OKAMOTO: We have about 20.

MR. WARREN: About 20, have you?

THE PRESIDENT: Out of the thirty, twenty will produce an affidavit?

MR. WARREN: We expect to.

MR. T. OKAMOTO: It all depends on the time when that witness is produced to the court. If, tomorrow, for instance, we don't have means of getting it processed -- I mean the affidavits --

MR. YAMAOKA: Might I state, your Honor, that what Mr. OKAMOTO means by "processing" is to have it translated into English.

Isn't that what you mean?

MR. T. OKAMOTO: That's right.

THE PRESIDENT: I understand what he means.

MR. WARREN: And we just -- well, we're very hard pressed; we always have been. Now, for instance, it may sound surprising to your Honor, but I haven't had a secretary for some weeks now, and we have to borrow back and forth. And sometimes we don't have typewriters, and our secretaries can't work.

THE PRESIDENT: I think, Colonel Warren, you had better give me a statement showing the name of each witness and what evidence will be given by him.

MR. WARREN: All right, sir.

THE PRESIDENT: In brief terms.

MR. T. OKAMOTO: It is already in the file, and I think tomorrow morning we are going to have --

THE PRESIDENT: You can read it out to me. You can come along here and name the witnesses and read what he's going to say -- I mean, summarize what he is going to say.

MR. WARREN: Let's see: Say at the Chamber session we can do that.

MR. T. OKAMOTO: Tomorrow morning?

MR. WARREN: How about one-thirty? I mean one o'clock.

CLERK OF THE COURT: Do you wish that application now that you are referring to?

THE PRESIDENT: We will make it tomorrow afternoon if you would like.

MR. WARREN: That is quite all right; fine.

THE PRESIDENT: Make it one o'clock tomorrow. Could we deal with it in a quarter of an hour?

MR. WARREN: Oh, I think we could, couldn't we? Because it is already printed. Your Honor can glance at it.

THE PRESIDENT: Make it four if you wish. It would be better to make it four o'clock.

MR. WARREN: It might be better if your Honor just took the document itself. Well, it only

briefly explains, though. You might want an explanation. I guess we had better have it at your convenience. Four o'clock would be all right. Any time that suits your Honor.

THE PRESIDENT: It would never do for me to issue a number of subpoenae for a number of witnesses without knowing their names or to what they are likely to depose.

MR. WARREN: That's right.

THE PRESIDENT: So, fix four o'clock tomorrow to get the necessary material, and Mr. Mantz will make an order for subpoena.

Have you any objection, Mr. Tavenner?

MR. TAVENNER: No, sir, none at all.

THE PRESIDENT: I can see no objection to that.

MR. WARREN: We are trying every way we can to be able to proceed without any delays because of the lack of adequate knowledge on the part of counsel. On these witnesses, and on other matters, it is our hope to be able to team an American counsel with a Japanese counsel, and they will become thoroughly familiar with the subject matter that they are going to have in the manner that we spoke about the other day. If we can do that -- well, sort of like Mr. Cole

and I today were spelling each other. We're both virtually under the weather; but, still, by both of us knowing the material and having our documents ready, either one of us can go on at any time. We want to have an American understudy for each American counsel and, in addition to that, an American counsel working in teamwork with any Japanese -- with a Japanese counsel assigned to any particular witness on particular documents they are going to present. And in such instances, it would be desirable to have the counsel who is not at the lectern handle the -- if objections are made by the prosecution, let the other counsel who is sitting at the counsel table handle the objections and matters of that kind. I think it will really save us a considerable amount of time and put us in a much better position to present to the Tribunal a more closely knit case; and we could put it more succinctly, I think, and more concisely than we have been in the past, if it can be worked out.

THE PRESIDENT: Yes. Well, what you said to me today or the day before yesterday --

MR. WARREN: Yes.

THE PRESIDENT: (Continuing was recorded, and I have heard no opposition to it.

MR. WARREN: Well, we will proceed, then, until somebody objects to it, on that basis, if we may.

Now, here's another problem we have, as I say: The first section went off much sooner than we expected, which put us right under the gun, and we're working against time every day; and we are having some mechanical difficulties. For instance, the running commentary that we give to the reporters, which assists us greatly -- to the reporters and to the language section -- there may be times when we get caught in a position where we will not be able to have that out, and it will occur for only a short period of time, but it may happen; and I wanted to call that to your Honor's attention so that, if we did get caught in a situation of that kind, you would realize why, because we probably have enough documents processed and in court now to go another day, depending on whether they are introduced or whether they are are not -- maybe two days. And we are trying to build up to be at least a week ahead of the Tribunal, and our expectations on it -- that is the most that we can possibly hope to do, I think, and continue along. But, in the early stages here, because of the fact that there were so many documents

which were not admitted and the failure of witnesses to appear which we had expected to use, and the failure to cross-examine which we thought would occur, it cut down the time materially on us, and we would like to call your attention to that so that you can bear with us if we get caught that way; but we're going to keep going somehow.

THE PRESIDENT: Well, I was told that you would take about two months to put the evidence covering all the general phases. But we have been over a month on it now. How far advanced are you, half way through?

MR. WARREN: Well, I don't know how much the others have. I don't think we are because I have never heard an estimate placed that low myself.

THE PRESIDENT: It was placed here in Chambers.

MR. WARREN: I was not here at that time, and it is surprising to me. But --

THE PRESIDENT: Two months for the evidence in the general phases; two months for the accused's evidence, that is, for the evidence of the accused personally; and I think the rest was to be time taken up with summation.

MR. WARREN: We may be able to finish ours in

three weeks or much sooner than that; I don't know. But we haven't -- this phase here, I haven't thought we could finish it much sooner than that. And --

THE PRESIDENT: What is your estimate now for all the phases?

MR. WARREN: I would say that, perhaps --

THE PRESIDENT: Another --

MR. WARREN: Not another year, no.

THE PRESIDENT: (Continuing) two months?

MR. WARREN: I would say two and a half to three months, your Honor --

THE PRESIDENT: Another two and a half to three months.

MR. WARREN: (Continuing) for the general phases.

THE PRESIDENT: They represented it to me as likely to take two months, that is, before they began. But, if you take another two and a half to three months, it will mean there will be three and a half months to four months before us.

MR. WARREN: Well, we are trying to cut to the bare bedrock on documents as they come through. We are discarding document after document after document, and we're trying to keep away from cumulative testimony as much as possible. Of course, I realize

it slips through occasionally, and it gets in, and then I am trying to be very careful; but we don't offer anything that we don't think has probative value or we don't think is necessary to our case. And it is just a constant weeding out and weeding out and weeding out. And we will try to cut our documents again if we can. If I can get the time over the weekend to go through the documents and see if there are some that we can get rid of, why, we'll do it to speed up. We're actually trying to do everything because we're just as tired of this case as anybody else.

THE PRESIDENT: Yes, I think we all are. We are all fatigued. Rather, we are all interested; but, still, we are all rather tired of sitting nine and ten months without a break, you know.

Well, I will pass it on to my colleagues.

MR. WARREN: All right. Thank you, sir.

THE PRESIDENT: I will meet you again at four tomorrow.

(Whereupon, at 1620, the proceedings were concluded.)

- - -